

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0260-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ARMANDO MUÑOZ RANDALL,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2005033548001SE

Honorable Teresa Sanders, Judge

REVIEW GRANTED; RELIEF DENIED

Armando M. Randall

Buckeye
In Propria Persona

B R A M M E R, Judge.

¶1 Pursuant to a plea agreement entered in April 2007, petitioner Armando Randall was convicted of armed robbery, a class two, dangerous felony, and was sentenced to an aggravated prison term of eighteen years. Randall seeks review of the trial court's order dismissing his petition for writ of habeas corpus, which the court correctly regarded as a petition for post-conviction relief given the nature of the claims raised. We will not disturb the court's ruling unless it has abused its discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006).

¶2 This is Randall's second post-conviction proceeding. The first was dismissed in December 2008 after appointed counsel filed a notice stating he had found no claims for relief to raise, and Randall failed to file a proper pro se petition within the time the court had given him to do so. Randall filed a petition for writ of habeas corpus in April 2011. Although Randall argued his petition should not be regarded as a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., because he was "not challenging the conviction or sentence per se," the claims belied his contention they were not cognizable under the rule. He claimed the sentence must be vacated because the trial court had not pronounced sentence with the requisite specificity and had lacked subject matter jurisdiction; he was entitled to a jury trial on the aggravating circumstances the state had alleged and the court found, invalidating the sentence under *Blakely v. Washington*, 542 U.S. 296 (2004), and *Stokes v. Schriro*, 465 F.3d 397 (9th Cir. 2006); and, there existed newly discovered evidence entitling him to relief. Randall argued the untimeliness of his post-conviction relief notice should be excused because of his lack of legal knowledge, not because he was at fault.

¶3 In its minute entry dismissing the petition and denying relief, the trial court clearly identified Randall’s claims and resolved them correctly in a manner that permitted review by this court. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Additionally, the court found, inter alia, that because this was a successive post-conviction proceeding, Randall only could raise claims falling under Rule 32.1(d), (e), (f), (g) or (h) and, as to such claims, was required to establish meritorious reasons why he had failed to raise the claims timely. *See Ariz. R. Crim. P. 32.2(b), 32.4(a)*. The court correctly found that “ignorance of the law is not a valid excuse for an untimely filing.” *See State v. Cornell*, 179 Ariz. 314, 331, 878 P.2d 1352, 1369 (1994) (pro se litigants subject to same procedural rules as attorney); *see also State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (defendant waives claims insufficiently argued on appeal). Although Randall challenges that finding in his petition for review, he has not persuaded us the court erred.

¶4 We note, too, that Randall insists his sentence was illegal and an illegal sentence is tantamount to “no sentence at all,” characterizing this as fundamental error, which he seems to be suggesting escapes the preclusive effect of Rule 32.2. But even when a sentence is illegal and the error, therefore, is fundamental, a claim based on that error is subject to the rule of preclusion. *See State v. Shrum*, 220 Ariz. 115, ¶¶ 6-7, 23, 203 P.3d 1175, 1177, 1180 (2009) (illegal sentence claim precluded by waiver); *State v. Swoopes*, 216 Ariz. 390, ¶ 42, 166 P.3d 945, 958 (App. 2007) (fundamental error claim not excepted from preclusion rule). Randall has not sustained his burden of establishing the trial court abused its discretion in dismissing his petition, either with respect to the

arguments we specifically have addressed above, or in any other respect. We therefore adopt the court's ruling. *Whipple*, 177 Ariz. at 274, 866 P.2d at 1360.

¶5 We grant Randall's petition for review. But, for the reasons stated, we deny relief.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge